HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Revision No.437 of 2001
(Old No. 207/1986)

Surendra Singh S/o Shri Vijaya Singh
R/o Purola
Tehsil Purola,
1. District Uttarkashi .....Revisionist

Versus

State .....Respondent

Hon'ble J. C. S. Rawat, J.

This criminal revision has been filed against the judgment and order dated 20.1.1986 passed by Sri V.S. Agarwal, the then Sessions Judge, Uttarkashi in Criminal Appeal No.24/1985, convicting the revisionist under section 420 IPC and sentencing him to undergo RI for one year and to pay a fine of Rs.300/-.

2. Brief facts of the case are that one Mahimanand filed a complaint against the Surendra Singh with the allegations that in the year 1983 the revisionist-accused had a theka of timber flowing and he gave a sub-contract to the complainant. At the time of accounting Rs.7000/- were found due to the complainant and the revisionist gave a cheque for that amount on 21.5.1984. When the complainant submitted the cheque he learnt that only Rs.27/- was left in the account of the revisionist. On 21.7.1984 the complainant again approached the bank but the cheque was dishonoured by the bank due to insufficiency of funds. The revisionist-accused had an intention to defraud the complainant.

3. Charge under section 420 IPC was framed against the revisionist-accused. The revisionist-accused pleaded not guilty and claimed the trial.

4. The prosecution in order to prove its case examined two witnesses, namely Mahimanand (PW1)-complainant and Bihari Lal (PW2). Both the witnesses have corroborated the story as indicated above.

5. On consideration of the entire evidence on record the learned Sessions Judge confirmed the judgment and order dated 4.9.1985 passed by Sri K. D. Bhatt, Munsif Magistrate, Purola, whereby the Magistrate convicted the revisionist and sentenced him to undergo one year R.I. and to pay Rs.300/- as fine and in default of payment of fine to undergo one month further R.I.

6. Heard Ms. Geeta Parihar learned counsel for the revisionist and Sri Nandan Arya learned A.G.A. and perused the record carefully.

7. At the outset, it need to be mentioned here that it is not disputed that the revisionist was flowing the timber of the complainant. It is also in lieu thereof the revisionist had issued a cheque of Rs.7000/- on 21.5.1984 in favour of the complainant. When the complainant submitted the cheque before the bank the cheque was dishonoured by the bank due to insufficiency of funds in the account of the revisionist. Meaning thereby, when the cheque was presented before the bank there was no sufficient funds in the account of the revisionist. It is well settled position of law that it is the intention of the drawer at the time when the cheque is issued which constitutes the material test and if it appears from the circumstances of the drawer that he did not expect that the cheque would be cashed in normal course, it would be prima facie proof of the intention to cheat as is clear from

Illustration (f) to S. 415 of the I.P.C. Direct proof of mens rea is seldom available and it has often to be inferred from the surrounding circumstances. If from the facts it is established that failure to meet the cheque was not accidental but a consequence expected by the accused, the presumption would be that the accused intended to cheat. Where prosecution establishes facts which lead prima facie to the conclusion that failure to meet the cheque was not accidental but was consequence expected and, therefore, intended by the accused it will then be for the accused to establish any fact which may be in his favour which was especially within his knowledge and of which the prosecution could not be expected to have any information. Dishonest intention at the inception of delivery or retention of property is the gist of the offence of cheating punishable under section 420 of the IPC.

8. Now, it has to be seen as to whether the revisionist is liable to be convicted under section 420 IPC or not. The learned counsel for the revisionist has contended that the complainant did not complete the work of flowing the timber and as such the revisionist was not required to deposit the amount for the clearance of the cheque. The learned lower court after considering the above submission of the revisionist rightly held that that the theory of the non-completion of work taken by the revisionist during the trial was an afterthought. In case, the complainant had not completed the work the revisionist should have given the notice to the complainant for remitting back the cheque. But, no such notice was given and as such his conducts also belies his theory of non-completion of work advanced during the trial. The trial court has rightly accepted the

evidence of the prosecution and has rightly found that the revisionist had absolutely no intention to make the payment of the cheque which was given to the complainant.

9. The revisionist has no intention right from the beginning to pay the said amount and he issued the cheque knowingly that he had no sufficient funds in his account. It is established from the facts and circumstances of the case that the revisionist had an intention not to pay the amount to the complainant. As such there is prima facie evidence and prove of the intention to cheat the complainant as provided under section 415 IPC.

10. The learned counsel for the revisionist further submitted that a lenient view may be taken and the sentence of imprisonment may be omitted. It was further submitted that the revisionist has no previous history and the incident took place in the year 1986 and as such the revisionist may be sentenced to the period already undergone. In case the said amount would have been given to the complainant he would have earned at least Rs.20,000/- or more by way of interest.

11. The matter pertains to the year 1983 and considering these factors no useful purpose will be served to sent him to jail now to serve out the sentence as awarded by the learned Sessions Judge. Having considered the mitigating factors, I am of view that ends of justice will be met if the sentence is further modified and reduced to the period of imprisonment already undergone and to pay fine of Rs.20,000/-(Rupees twenty thousand only).

12. For the reasons aforesaid, the revision is partly allowed. Conviction of revisionist under section 420 IPC is affirmed and maintained. The sentence awarded is modified to the sentence already undergone and to pay fine of Rs. 20,000/- (Rupees twenty thousand only) under section 420 IPC. Out of Rs.20,000/-, an amount Rs.15,000/- (Rupee fifteen thousand only) shall be paid to Mahimanand as compensation. In default of payment of fine, the revisionist shall undergo for a period of two months.

13. The revisionist is granted four months' time to deposit the fine before the lower court.

Dated 29.10.2004 **(J.C.S. Rawat, J.)**

LSR